

NO. 24754

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

---

STATE OF HAWAI'I, Plaintiff-Appellant

vs.

KELLY MONIZ, Defendant-Appellee

and

HENRY KEY, Defendant

---

APPEAL FROM THE THIRD CIRCUIT COURT  
(CR. NO. 01-1-153)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, and Ramil, JJ.,  
and Acoba, J., Dissenting)

Plaintiff-appellant State of Hawai'i [hereinafter the prosecution] appeals from the pretrial order of the circuit court of the third circuit, the Honorable Greg K. Nakamura presiding, issued on November 13, 2001, granting defendant-appellee Kelly Moniz's (Moniz) motion to suppress evidence. On appeal, the prosecution argues that the circuit court erred in granting Moniz's motion to suppress evidence because the affidavit in support of the search warrant: (1) provided sufficient facts and underlying circumstances upon which to base probable cause; and (2) provided sufficient indicia of the confidential informant's reliability. Moniz argues that the affidavit was insufficient, or in the alternative, that the information provided by the informant was stale.

Upon carefully reviewing the record and the briefs submitted by the parties and having given due consideration to the arguments advanced and the issues raised, we hold that the underlying circumstances set forth in the affidavit satisfied the Aguilar test adopted by this court in State v. Davenport, 55 Haw. 90, 93-94, 516 P.2d 65, 68-69 (1973) (citing Aguilar v. Texas,

378 U.S. 108, 114 (1964)), and thus that probable cause existed to issue the search warrant. We further hold that the information provided by the informant was not stale.

IT IS HEREBY ORDERED that the pretrial order from which the appeal is taken is vacated and this case remanded for further proceedings.

DATED: Honolulu, Hawai'i, December 24, 2002.

On the briefs:

Michael J. Udovic, Deputy  
Prosecuting Attorney,  
for plaintiff-appellant

James S. Gifford, Deputy  
Public Defender, for  
defendant-appellee